IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 13TH NOVEMBER 2007 / 22ND KARTHIKA 1929

CRL.A.No. 71 of 2003()

SC.930/2000 of ADDL.SESSIONS COURT (ADHOC), KASARAGOD
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APPELLANT: ACCUSED:

K.FRANCIS TALIS, S/O.LADIA TALIS,
DAIGOLI, KOLIYOOR VILLAGE, KASARAGOD TALUK.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS: STATE:
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1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

2. S.H.O. MANJESHWAR POLICE STATION,
MANJESHWAR.

BY PUBLIC PROSECUTOR, SRI C.K.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 13/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CRL.M.P.NO.513/2003 IN CRL.A.NO.71/2003

DISMISSED.

SD/- K.R.UDAYABHANU, JUDGE

13/11/2007

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K.R.UDAYABHANU, J.

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Crl. A.No.71 of 2003-A

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Dated this the 13th day of November, 2007

J U D G M E N T

The appellant is the accused in S.C.No.930/2000 who stands convicted for the offence under Section 55(a) of the Abkari Act and sentenced to undergo rigorous imprisonment for three years and to pay a fine of rupees one lakh and in default to undergo rigorous imprisonment for six months.

2. The prosecution case is that on 06/05/1999 at 7.30 p.m the accused was found transporting Karnataka made arrack in his jeep bearing Reg.No.KA 19/P.2346 at Deigoli in Koliyoor village.

3. The evidence adduced in support of the prosecution consisted of the testimony of PWs.1 to 4, Exts.P1 to P6 and MOs.1 to 7.

4. Ext.P6 is the Chemical Analysis Report proved by PW.4, the detecting-cum-investigating officer, which would positively establish that the articles seized are Karnataka made arrack.

5. The testimony of PW.1 is that while the Sub Inspector (PW.4) and party including himself was scouting the area on the law and order patrol duty came across a stationary jeep from which the accused was found running away on sighting the police. According to him, i.e., PW.1, the police constable that though they chased the accused for about 300 metres towards the South he could not be apprehended. The identity of the ran away accused was ascertained from one Sheshappa (PW.2), a resident nearby. PW.1 the police constable has stated that he has identified the accused. It was brought out in the cross-examination that he saw the face of the accused and that he is familiar with him as he used to be seen in Hossangadi.

6. Inside the jeep the contraband was recovered as contained in 10 plastic sacks each containing 500 packets. The packets were of 100 ml capacity. Sampling was done at the spot. The R.C book, driving licence, tax card, insurance policy etc. were seized.

7. PW.2 the independent witness as to the identity of the accused turned hostile. His Section 161 Cr.P.C statement was marked Ext.P2, as per which he has stated that he had seen the accused running away and that he has told the Sub Inspector and party about the identity of the

accused when the Sub Inspector and party came to him in hot pursuit of the accused. PW.4 the Sub Inspector has also testified as to the incident.

8. The contention that there is no independent witness to the seizure was rightly turned down by the court below. The witnesses to the mahazar are the police constables. There is no need of independent witnesses in the situation where the official witnesses are only available. The case of the accused, in his Section 313 Cr.P.C statement is that his vehicle was stolen. There is nothing to show that he has taken any steps to recover the vehicle. Moreover, he was arrested about one year after the incident on 20/08/2000. In view of the above evidence adduced, I find that the prosecution has established beyond reasonable doubt the guilt of the accused. The conviction is confirmed.

9. The counsel for the appellant has sought for modification of sentence pointing out that 18 years have lapsed since the commencement of the proceedings and that the accused have already undergone pretrial detention and that the contraband seized was not spurious liquor. In the circumstances the sentence imposed is modified to the imprisonment already undergone and to pay a fine of rupees one

lakh and in default to undergo simple imprisonment for six months. The criminal appeal is disposed of as above.

K.R.UDAYABHANU,
Judge

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